

Wednesday, January 27, 2021 at 10:57:23 Central Standard Time

Subject: Re: Native Emails
Date: Tuesday, August 13, 2019 at 12:41:16 PM Central Daylight Time
From: Phil Mann
To: Andrew Bleiman
Attachments: image001.jpg, image002.jpg

Thanks Andrew, we can get on this upon my return.

Regards,

Phil

On 08/13/2019 03:17 AM, Andrew Bleiman wrote:

Phil:

☺☺+

Pursuant to our prior agreement relating to discovery, we still need the production of the native format emails between Kevin and Ken from the secret account that you are now the custodian of. ☺☺+ I understand that you are traveling and we can address this issue when you return to the office. ☺☺+ Thank you.

☺☺+

Regards,

☺☺+

Andrew

Andrew P. Bleiman, Esq.

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Page 1 of 2

Exhibit A

have received this email in error please notify the sender by reply email and destroy all copies of this message in your possession, custody or control.

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Wednesday, January 27, 2021 at 17:18:55 Central Standard Time

Subject: Re: Activity in Case 3:17-cv-05760-BHS HP Tuners, LLC v. Sykes-Bonnett et al Set/Reset Deadlines
Date: Monday, August 31, 2020 at 5:33:48 PM Central Daylight Time
From: Andrew Bleiman
To: Phil Mann
CC: Mark Fishbein
Attachments: Re: Native Emails.eml

Phil:

Are you suggesting that Defendants did not agree to produce the native emails? We have discussed this on several occasions including during breaks at Kevin's second deposition session where we reviewed the emails on your computer in your office and the custody of the account was transferred to you during the deposition for purposes of you being able to produce the native emails to us. In addition, in the months following the deposition, we communicated over the phone regarding this issue and then corresponded via email on this issue on 8/13/2019, where you advised in an email to me that you would handle the production when you returned to the office (copy attached). Nevertheless, the obligation to supplement exists under the FRCP and you have these responsive communications in your possession which should have been produced long ago and should be produced at this time.

Separately, we should also note that the requested production is the subject of an outstanding subpoena as well. On 1/14/20, HPT served 4 subpoenas in the HP Tuners v. Cannata (D.Nev) case on: (1) Kevin Sykes-Bonnett, (2) John Martinson, (3) Syked ECU Tuning, Inc., and (4) Syked Performance Engineering. As a courtesy these were sent in care of you as counsel. As the 1/14/20 email noted, virtually all of the items sought had been previously produced in addition to a few new items (very recent communications) and the native hptuners@yahoo.com emails. We did not request that you reproduce what had already been produced, but only to agree in those instances that such responsive production could be used in the Cannata litigation and to produce items which had not been previously produced in the Washington case.

If you have changed your position on this issue and are now not agreeing to produce the native emails, please advise so that we can address this issue. Thank you.

Andrew P. Bleiman
Marks & Klein, LLP
1363 Shermer Road, Suite 318
Northbrook, Illinois 60062
(O) 312.206.5162
(M) 312.420.5568
andrew@marksklein.com

From: Phil Mann <phil@mannlawgroup.com>
Date: Monday, August 31, 2020 at 3:29 PM
To: Andrew Bleiman <andrew@marksklein.com>
Cc: Mark Fishbein <mark@marksklein.com>
Subject: Re: FW: Activity in Case 3:17-cv-05760-BHS HP Tuners, LLC v. Sykes-Bonnett et al Set/Reset Deadlines

Page 1 of 3

Exhibit B

Andrew, I will review this and get back to you with our additions shortly.

In the meantime, can you provide me with the emails wherein we supposedly agreed to produce native emails from the fhptuners@yahoo.com email account?

As you know, Syked ECU Tuning Incorporated ceased to exist prior to May, 2019. Accordingly, there is no additional discovery to be provided and nothing in the way of supplementation.

Thanks,

Phil

On 08/31/2020 08:29 AM, Andrew Bleiman wrote:

Phil:

In accordance with the Order below, please see the attached draft Status Report for your review. Please confirm this is agreeable and we will have filed before 9/4. Thank you.

Regards,

Andrew

Andrew P. Bleiman
Marks & Klein, LLP
1363 Shermer Road, Suite 318
Northbrook, Illinois 60062
(O) 312.206.5162
(M) 312.420.5568
andrew@marksklein.com

From: "ECF@wawd.uscourts.gov" <ECF@wawd.uscourts.gov>

Date: Thursday, August 20, 2020 at 11:50 AM

To: "ECF@wawd.uscourts.gov" <ECF@wawd.uscourts.gov>

Subject: Activity in Case 3:17-cv-05760-BHS HP Tuners, LLC v. Sykes-Bonnett et al
Set/Reset Deadlines

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

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U.S. District Court

United States District Court for the Western District of Washington

Notice of Electronic Filing

The following transaction was entered on 8/20/2020 at 9:49 AM PDT and filed on 8/20/2020

Case Name: HP Tuners, LLC v. Sykes-Bonnett et al

Case Number: 3:17-cv-05760-BHS

Filer:

Document Number: No document attached

Docket Text:

Pursuant to the Court's [263] Order, the parties Joint Status Report is due by 9/4/2020. (MGC)

3:17-cv-05760-BHS Notice has been electronically mailed to:

Stephen Garrett Leatham sgl@hpl-law.com, ann@hpl-law.com

Philip P Mann phil@mannlawgroup.com, tim@mannlawgroup.com

Andrew P Bleiman andrew@marksklein.com

3:17-cv-05760-BHS Notice will not be electronically mailed to:

From: Andrew Bleiman
To: Phil Mann
Cc: Mark Fishbein
Subject: Re: Activity in Case 3:17-cv-05760-BHS HP Tuners, LLC v. Sykes-Bonnett et al Set/Reset Deadlines
Date: Tuesday, October 13, 2020 3:19:50 PM

Phil:

I hope all is well. Circling back on the emails below, please let me know when you and Kevin are available to discuss the document issues. Thanks.

Andrew

Andrew P. Bleiman
Marks & Klein, LLP
1363 Shermer Road, Suite 318
Northbrook, Illinois 60062
(O) 312.206.5162
(M) 312.420.5568
andrew@marksklein.com

From: Phil Mann <phil@mannlawgroup.com>
Date: Wednesday, September 2, 2020 at 11:42 AM
To: Andrew Bleiman <andrew@marksklein.com>
Subject: Re: FW: Activity in Case 3:17-cv-05760-BHS HP Tuners, LLC v. Sykes-Bonnett et al Set/Reset Deadlines

Andrew,

I am traveling this week and will have limited email coverage.

I think we need to separately set out our views to the Court regarding further action on this case and, accordingly, I am attaching our revisions to the Joint Status Report that now includes a statement of Defendants' position. Please add this to the draft and submit it to the Court by Friday.

Also, Mr. Sykes-Bonnett and I would like to speak regarding the emails you have requested. I think we can work something out and will contact you soon after I determine his availability.

Regards,

Phil

On 8/31/2020 8:29 AM, Andrew Bleiman wrote:

Phil:

Exhibit C

In accordance with the Order below, please see the attached draft Status Report for your review. Please confirm this is agreeable and we will have filed before 9/4. Thank you.

Regards,

Andrew

Andrew P. Bleiman
Marks & Klein, LLP
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Northbrook, Illinois 60062
(O) 312.206.5162
(M) 312.420.5568
andrew@marksklein.com

From: "ECF@wawd.uscourts.gov" <ECF@wawd.uscourts.gov>

Date: Thursday, August 20, 2020 at 11:50 AM

To: "ECF@wawd.uscourts.gov" <ECF@wawd.uscourts.gov>

Subject: Activity in Case 3:17-cv-05760-BHS HP Tuners, LLC v. Sykes-Bonnett et al
Set/Reset Deadlines

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U.S. District Court

United States District Court for the Western District of Washington

Notice of Electronic Filing

The following transaction was entered on 8/20/2020 at 9:49 AM PDT and filed on 8/20/2020

Case Name: HP Tuners, LLC v. Sykes-Bonnett et al

Case Number: 3:17-cv-05760-BHS

Filer:

Document Number: No document attached

Docket Text:

Pursuant to the Court's [263] Order, the parties Joint Status Report is due by 9/4/2020. (MGC)

3:17-cv-05760-BHS Notice has been electronically mailed to:

Stephen Garrett Leatham sgl@hpl-law.com, ann@hpl-law.com

Philip P Mann phil@mannlawgroup.com, tim@mannlawgroup.com

Andrew P Bleiman andrew@marksklein.com

3:17-cv-05760-BHS Notice will not be electronically mailed to:

From: [Mark Fishbein](#)
To: [Phil Mann](#)
Cc: [Andrew Bleiman](#)
Subject: LCR 37(a)(2) and Judge Settle's Procedures (Meet And Confer/Duty To Supplement (3))
Date: Tuesday, January 26, 2021 2:32:00 PM
Attachments: [SettleDiscoveryDisputes.pdf](#)

Phil –

We still have not received any response to our meet and confer efforts with regard to your supplementation of discovery, and the related removal of confidentiality designations. Please note that LCR 37 and our protective order require our good faith efforts at resolution. While we have diligently done so for nearly 2 years, Judge Settle's Chambers Procedures (attached) also apply.

The failure to resolve the subject discovery issues are particularly time-sensitive in light of discovery deadlines in the D.Nev litigation. As a result, we are strongly encouraged to call chambers together, at 253-882-3850 and make arrangements for a telephone conference.

Although we hope to arrive at a resolution, time is of the essence and our motion has been prepared for filing in the event we do not receive a response from you and/or fail to resolve this issue.

Mark

Mark I. Fishbein, Esq.
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From: Mark Fishbein
Sent: Monday, January 25, 2021 3:51 PM

Exhibit D

To: Phil Mann <phil@mannlawgroup.com>
Cc: Andrew Bleiman <andrew@marksklein.com>
Subject: Meet And Confer/Duty To Supplement (2)

Hi Phil. Just as a point of clarification, my initial email made the following general reference:

Consistent with FRCP 26(e), we similarly have requested that you supplement everything since your last production and after May 16, 2019. The above described native emails are just the primary and oft-discussed example.

In seeking your supplementation of everything since your last production, we are more specifically looking for you to include, but not limit your production to:

- Any and all documents and communications, including but not limited to electronic mail communications, text messages, and direct messages, between Defendant(s) and Kenneth Cannata from January 1, 2015 to the present;
- Any and all electronic email communications in their native format exchanged and sent between the email addresses somethingnew1892@yahoo.com and fhptuners@yahoo.com (admitted to be in the possession, custody and control of Defendants' counsel);
- All agreements, contracts, memoranda of understanding or other documents reflecting or referencing a contractual relationship between Defendant(s) and Kenneth Cannata or any entity owned by him between October 21, 2016 to the present; and,
- All documents and communications which evidence, refer or relate to any payment, remuneration, compensation or exchange of consideration between Defendant(s) and Kenneth Cannata from October 21, 2016 to the present.

Should you wish to discuss this any further than you and Andrew already have, you can reach me at (312) 882-6771. Thank you.

Mark

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From: Mark Fishbein

Sent: Monday, January 25, 2021 3:28 PM

To: Phil Mann <phil@mannlawgroup.com>

Cc: Andrew Bleiman <andrew@marksklein.com>

Subject: Meet And Confer/Duty To Supplement

Phil –

Since the deposition of Kevin Sykes-Bonnett on May 16, 2019, we have been attempting in good faith to obtain your compliance with the production of various items, namely the native format emails and texts between Kevin and Ken Cannata, from any source, including but not limited to somethingnew1892@yahoo.com and fhptuners@yahoo.com, which you have are now the custodian of. You and Andrew reviewed these emails on your computer during a break in Kevin's deposition, and you and he communicated by phone and email on multiple occasions thereafter during which you agreed to supplement your prior discovery responses with these items.

Consistent with FRCP 26(e), we similarly have requested that you supplement everything since your last production and after May 16, 2019. The above described native emails are just the primary and oft-discussed example.

In multiple "meet and confer" instances since May 16, 2019, you again agreed in good faith to provide these documents. On each occasion, we refrained from a motion to compel based on your assurances. At a minimum, emails dated 8/13/19, 8/31/20, 9/2/20, and 10/13/2019 reflect the instances where you and Andrew conferred, and you agreed to provide the documents and comply with the supplemental production of same.

To date, you have produced nothing at all despite your representations when conferring with Plaintiff's counsel.

It would seem that over 20 months later and our multiple prior attempts to meet and confer in good faith to obtain your cooperation with discovery, our immediate filing of a motion to compel is now germane and proper. Should you wish to discuss any of this again, not merely for the sake of discussion, but in conjunction with the *immediate* production of the documents we have sought since May, 2019, please respond.

Additionally, we will move in accordance with our stipulated protective order (and addendum) to remove all designations of confidentiality regarding the disclosure of any and all communications that Ken authored or received as not appropriately designated confidential for use in *HP Tuners v. Cannata*, D.Nev. No. 3:18-cv-00527.

HPT-Syked Performance Engineering: This is also a reminder for us to conduct a Rule 26(f) conference (right away) regarding our joint status report due on 2/1/21 (next Monday).

Time is of the essence. Thank you.

Mark

Mark I. Fishbein, Esq.

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From: Phil Mann
To: Mark Fishbein
Cc: Andrew Bleiman
Subject: Re: LCR 37(a)(2) and Judge Settle's Procedures (Meet And Confer/Duty To Supplement (3))
Date: Tuesday, January 26, 2021 2:42:24 PM

Mark, as you know, the discovery cutoff in this case has long since passed.

If you wish to reopen discovery, you should file a motion to do so and establish good cause for so doing.

We have long ago provided the discovery that defendants were required to, and the supposed obligation to "supplement" discovery does not extend to the matters you now seek. In short, it is clear you are using the delay in this case prompted by Judge Settle's calendar conflict as a mechanism for seeking discovery in the separate Nevada case.

Please provide the legal basis for your claim that defendants here are obligated to provide you with discovery related only to the Nevada litigation.

Regards,

Phil

On 1/26/21 12:32 PM, Mark Fishbein wrote:

Exh. b + E